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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D7

[redacted]

Date: NOV 02 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition to employ the beneficiary pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as an intracompany transferee employed in a managerial or executive capacity. The petitioner was a [redacted] It claimed to be a subsidiary of [redacted] located in [redacted] The petitioner sought to employ the beneficiary as the president of its new office in the United States.

The director denied the petition on April 29, 2004, based on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary had been employed by the foreign entity in a qualifying managerial or executive capacity; (2) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity within one year of the approval of the petition; and (3) that the petitioner and the foreign entity that employed the beneficiary have a qualifying relationship.

The AAO dismissed the petitioner's appeal in a decision dated June 28, 2005, and upheld the director's decision on all three grounds for denial.

The petitioner filed a motion to reopen on August 1, 2005. The motion consisted on a Form I-290B, Notice of Appeal to the AAO, on which counsel provided the following statement:

> Beneficiary is qualified for an L-1 visa. Petitioner can establish the beneficiary's foreign duties meet the statutory definition for executive or managerial duties; the beneficiary will be employed by the U.S. entity in a managerial or executive capacity within one year; and there is a qualifying relationship with the foreign entity.

Counsel stated on the Form I-290B that he would submit a brief and/or evidence to the AAO within 30 days. Counsel subsequently submitted a brief and evidence in support of the motion on August 29, 2005.

The AAO notes that the petitioner was not afforded 30 additional days in which to supplement its motion to reopen additional documentation. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows a petitioner additional time to submit a brief or evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Therefore, in this case, the petitioner's motion consists solely of a Form I-290B containing a claim that the petitioner has the ability to establish the beneficiary's eligibility for the requested classification. The brief and evidence submitted by counsel on August 29, 2005, more than 30 days subsequent to the AAO's decision, need not and will not be considered.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Furthermore, 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

In the instant case, the petitioner's motion, as filed on August 1, 2005, does not contain any new facts and is unsupported by any statute, regulation or pertinent precedent decisions to establish that the prior decisions were based on an incorrect application of law or USCIS policy. Counsel merely asserts that the petitioner can establish that the beneficiary is eligible for the requested classification. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

Furthermore, the AAO finds that the petitioner is no longer eligible to file a Form I-129, Petition for a Nonimmigrant Worker, on behalf of the beneficiary as it is no longer a qualifying legal entity doing business in the United States.

In the course of verifying the validity of the petitioning entity, the AAO reviewed the public records maintained by the Missouri Secretary of State.[1] The search revealed that as of March 29, 2006, the petitioning corporation "stands administratively dissolved or revoked," and "may not carry on any business except that necessary to wind up and liquidate its business and affairs." The dissolution of the petitioner's corporate status effectively terminates the petitioner's business.

In order to meet the definition of a "qualifying organization" pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G), the petitioner must be a legal entity doing business in the United States, pursuant to the definition at 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner in this matter is no longer a legal U.S. entity doing business in the United States. Where there is no active and legal U.S. entity, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position offered in the petition has become moot.

Accordingly, while the petitioner has not withdrawn the appeal in this proceeding, its dissolved corporate status renders the issues in this proceeding moot.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not

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[1] *See* Website of Missouri Secretary of State, Business Services, Business Entity Search, [redacted] A copy of the information found has been incorporated into the record of proceeding.

meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.